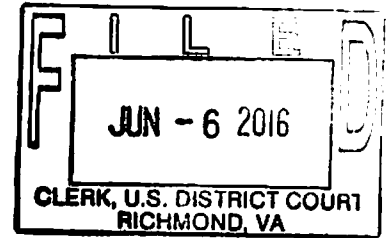


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division



UNITED STATES OF AMERICA

v.

Criminal No. 3:08CR379

GIOVANNI CHERRY

MEMORANDUM OPINION

Cherry pleaded guilty to possession of a firearm by a convicted felon. (Plea Agreement 1, ECF No. 14.) On November 17, 2009, the Court entered final judgment and sentenced Cherry to 293 months of imprisonment. (J. 2, ECF No. 29.) By Memorandum Opinion and Order entered on May 11, 2015, the Court denied a motion under 28 U.S.C. § 2255 filed by Giovanni Cherry. (ECF Nos. 43, 44.) On May 31, 2016, the Court received another 28 U.S.C. § 2255 Motion from Cherry and a motion to hold the § 2255 in abeyance while he pursued relief under the 28 U.S.C. § 2244(b)(3)(A).

The Antiterrorism and Effective Death Penalty Act of 1996 restricted the jurisdiction of the district courts to hear second or successive applications for federal habeas corpus relief by prisoners attacking the validity of their convictions and sentences by establishing a "gatekeeping mechanism." Felker v. Turpin, 518 U.S. 651, 657 (1996) (internal quotation marks omitted). Specifically, "[b]efore a second or successive application permitted by this section is filed in the district

court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." 28 U.S.C. § 2244(b)(3)(A).

The plain language of the statute requires Cherry to obtain permission from the United States Court of Appeals for the Fourth Circuit prior to filing a successive § 2255 motion in this Court. Accordingly, Cherry's motion to hold his § 2255 Motion in Abeyance (ECF No. 53) will be denied. Because the Fourth Circuit has not authorized this Court to entertain Cherry's successive § 2255 Motion, the § 2255 Motion (ECF No. 52) will be dismissed for want of jurisdiction. The Court will deny a certificate of appealability.

The Clerk is directed to send a copy of this Memorandum Opinion to Cherry and counsel for the United States.

Date: *June 6, 2016*
Richmond, Virginia

/s/ REP

Robert E. Payne
Senior United States District Judge